Supreme Court, U.S.
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JOSEPH F. [illegible] JR.
CLERK

86-1522

No._____

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1986

Andrew Templeman, Appellant

V.

Presbytery of Northern New England,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF NEW HAMPSHIRE

JURISDICTIONAL STATEMENT

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February 13, 1987

BEST AVAILABLE COPY

36 pp

QUESTION PRESENTED

Whether the First Amendment of the United States Constitution and Part One, Article 6 of the New Hampshire Constitution insulate an ecclesiastical organization from liability for its breach of contract and tortious conduct in relation to an employment contract unrelated to any doctrinal or ecclesiastical issues.

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Cases: Watson v. Jones, 80 U.S. 679 20 L Ed. 666 (1872)
Serbian Orthodox Diocese v. Milivorsevich, 426 U.S. 696, 49 L Ed. 2d (1976)
Gonzalez v. Archbishop, 280 U.S. 1, 74 L Ed. 131, 50 SC 5 (1929)

Constitutional Provisions:

United States Constitution, Amendment I

New Hampshire Constitution, Part One, Article 6

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

ANDREW TEMPLEMAN, Appellant

V.

PRESBYTERY OF NORTHERN NEW ENGLAND, Appellee

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

JURISDICTIONAL STATEMENT

Andrew Templeman, the Appellant, appeals from the final judgment of the Supreme Court of New Hampshire, dated November 24, 1986, affirming the decision of the lower court on the Appellee's Motion to Dismiss in which the Appellee asserted that judicial intervention by a court violates the

establishment clause of the First Amendment of the United States Constitution and Part One, Article 6 of the New Hampshire Constitution.

OPINIONS BELOW

The opinion of the Supreme Court of New Hampshire is not reported. It is reprinted in the appendix hereto, p. 1a infra.

The order of the Hillsborough County Superior Court of New Hampshire is not reported. It is reprinted in the appendix hereto, p. 1c infra.

JURISDICTION

The judgment of the Supreme Court of New Hampshire affirming the decision of the lower court granting appellee's motion to dismiss was entered on October 7, 1986. A motion for reconsideration was entertained and denied on November 24, 1986.

A notice of appeal to this court was timely filed in the Supreme Court of New Hampshire on February 13, 1987.

This appeal is being docketed in this court within ninety days from the denial of rehearing below. The jurisdiction of this court is invoked under 2 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND RULES

First Amendment, United States Constitution:

> "Congress shall make no law respecting an establishment of Religion, or prohibiting the free exercise thereof . . ."

Part One, Article 6th, New Hampshire Constitution:

> ". . . the several

parishes, bodies corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting them for their support or maintenance, or both . . ."

HOW THE FEDERAL QUESTION WAS RAISED

After being served with a Writ of Summons, the appellee claimed in a motion to dismiss that the appellant, by initiating the action in the New Hampshire Superior Court, ". . . attempts to invoke the jurisdiction of this court to challenge the disciplinary and ecclesiastical decisions of the defendant Presbytery of Northern New England . . ." The defendant further stated in its motion to dismiss that "[T]he First and Fourteenth Amendments to the United States Constitution prohibit this court from maintaining

jurisdiction over the plaintiff's claims against defendant Presbytery of Northern New England . . ." The Hillsborough County Superior Court of New Hampshire granted the defendant's motion to dismiss stating that ". . . in a matter as fundamental as the church-pastor relationship, the decision of the church heirarchy must prevail without interference from the State." An appeal was filed in the New Hampshire Supreme Court alleging that the findings of the lower court were in error and requested that the order of the lower court be vacated. The New Hampshire Supreme Court affirmed the decision of the lower court.

STATEMENT OF THE CASE

The plaintiff is an ordained minister of the Presbyterian Church (U.S.A.). On May 28, 1978, he entered a contract with the Community Church of New Boston and the Presbytery of Northern New England to act as a part time pastor for the Community Church of New Boston. On January 5, 1982, a member of the Community Church demanded the defendant's resignation as pastor. The reasons given were the plaintiff's move from the Manse, a claim that the plaintiff was being paid for time which he was not spending working, and a lack of attention to detail. Complaints were also voiced concerning church attendance and the contents of the plaintiff's sermons. Because of these voiced dissatisfactions with the plaintiff's performance of his contract, the matter

was referred to the Ministerial Relations Committee of the defendant Presbytery of Northern New England, which committee is charged with advising and counseling churches and ministers as to their temporal welfare. That committee, acting through its members, failed to fully investigate the charges of improper work, but instead almost immediately called for the plaintiff's resignation. That resignation was rejected by the members of the Community Church of New Boston, but the members of the Ministerial Relations Committee vowed to terminate the plaintiff's contract, and did so by orchestrating the appointment of an administrative commission which eventually called for the termination of the plaintiff's contract. That termination did in fact

occur in October of 1982.

The plaintiff brought actions against the Presbytery of Northern New England for breach of its contract and contractual obligations of good faith and fair dealing with the plaintiff, interference with the plaintiff's contract with the Community Church of New Boston, and negligent failure to properly, thoroughly, and adequately investigate the allegations brought against the plaintiff. Defendant Presbytery filed a motion to dismiss based upon the First Amendment U. S. CONST. AMEND. I, and the New Hampshire Constitution, Part One, Article 6, or, claiming that the plaintiff's status as a pastor precluded the courts of this state from providing the plaintiff with relief for the defendant's breach of

contract and tortious conduct.

After a hearing on the defendant's motion to dismiss, the Superior Court entered an order dismissing all of the plaintiff's claims against the Presbytery of Northern New England.

The New Hampshire Supreme Court affirmed the decision of the lwoer court.

THE QUESTION IS SUBSTANTIAL

The question as to whether the First Amendment of the United States Constitution and Part One, Article 6 of the New Hampshire Constitution insulate an Ecclesiastical Organization from Liability for its breach of contract and tortious conduct in relation to an employment contract unrelated to any doctrinal or ecclesiatical issues is a substantial one.

Without question, Ecclesiatical Organizations are well protected under the First Amendment of the United States Constitution, as well as Part One, Article 6 of the New Hampshire State Constitution, from the interference of a secular court with regard to internal doctrinal decisions. The Supreme Court has stated:

> ...[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have bee decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson v. Jones, 80 U.S. 679, 727, 20 L.Ed. 666, (1872).

Accord, Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L.Ed 2d

at 163 (1976).

This issue is not being questioned by the Appellant. The question the Appellant puts before this Court now is whether religious entities should be free from responsibility under the civil law when entering contractual relationships. Is it not possible for a secular court to have jurisdiction over a contractual dispute involving a religious entity and an individual and render a decision based only on the contractual relationship without violating the doctrinal issues of the church which are protected by the First Amendment of the Constitution. In what other way can the rights of the individual be protected from unfair treatment. When an individual and a Religious entity venture into a contract

together and the individual agrees to abide by the rules and doctrine of the Church in fulfilling its obligations, should he not be able to expect that the Church will also abide by the same rules and doctrine without arbitrariness. Who can the individual turn to if the Church does not fulfill its obligations as agreed upon? Is it not possible to protect the rights of the individual entering a contract while also maintaining the integrity of the First Amendment? Should the individual's remedy be any different because he contracted with an ecclesiatical organization?

Clearly, Religious Entities may contract with whom they choose and for what purposes they choose free from the influence of a secular court. But as an

entity do they not also have the obligation to fulfill their contracts in the terms they agreed to. The Supreme Court has held in the past that:

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as con- conclusive, because the parties in interest made them so by contract or otherwise.

Gonzalez v. Archbishop, 280 US 1, 74 L Ed 131 50 S Ct 5 (1929).

In Gonzalez v. Archbishop, the Court has recognised that certain internal church matters are not purely ecclesiatical and are often subject to arbitrariness by tribunal members. In the case before the Court now, the Appellee, Presbytery of Northern New England has demonstrated arbitrariness

in the dealings of the Appellant, Andrew Templeman in their contractual relationship. The Appelle breached its duty to use reasonalbe care and to properly, throughly, and adequately investigate the accuracy of allegations made against the Appellant before terminating the contract. In such a case as this the plaintiff should be able to turn to the secular courts for a fair ruling based on the facts of the contractual relationship free from any influence or interference on church doctrine as provided in the First Amendment.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this

appeal.

Respectfully Submitted,

Randall E. Wilbert
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188 Main Street
Nashua, NH 03060
Counsel for Appellant

Feb. 13, 1987

APPENDIX

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 86-243 Andrew Templeman v. Presbytery of No. N.E. the court upon October 7, 1986 made the following order:

> Decision below is summarily affirmed in accordance with Rule 25(1)(b).

Ralph H. Wood,
Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 86-243 Andrew Templeman v. Presbytery of No. New England the court upon November 24, 1986 made the following order:

> Plaintiff's motion for reconsideration is denied. Thayer, J. did not participate.

Ralph H. Wood,
Clerk

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT

APRIL TERM 1986

ANDREW TEMPLEMAN	
v.	C-85-2177
PRESBYTERY OF NORTHERN NEW ENGLAND	
ANDREW TEMPLEMAN	
v.	C-85-2317
BURRETT McBEE	

ORDER

Defendants move to dismiss the above-captioned actions, asserting that judicial intervention by this Court violates the Establishment Clause of the First Amendment, U. S. CONST. amend. I,

and the New Hampshire Constitution, part 1, art. 6.

On May 28, 1978, plaintiff entered into a contract with the United Presbyterian Church to act as part-time pastor for the Community Church of New Boston, New Hampshire. In accepting this position, plaintiff agreed to submit to the ecclesiastical government of the Church, and to the rules and regulations therein. On January 5, 1982, at a meeting of the "session" (a governing church body with authority over the affairs of the local member church), several grievances concerning plaintiff's performance of his duties were discussed. On June 1, 1982, an Administrative Commission was appointed by the Presbytery of Northern New

England (hereinafter Defendant) to investigate the problems in plaintiff's church. The Administrative Commission recommended plaintiff's termination, and on October 9, 1982, in accordance with the Commission's recommendation, the defendant voted to terminate the plaintiff's pastoral relationship with the Community Church pursuant to its authority granted by the Presbyteries' Book of Order. See Chapter G. XII, Section 42.10. On September 18, 1985, plaintiff filed suit alleging that defendant breached its employment contract and committed a variety of related breaches in so doing. On January 29, 1986, defendant filed this Motion to Dismiss currently before the Court.

The law regarding a civil court's jurisdiction over ecclesiastical controversies is clear and undisputed. In Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), the Supreme Court held that civil courts were precluded by the First Amendment from maintaining jurisdiction over ecclesiastical disputes. In the case, a Bishop of the American-Canadian Diocese of the Serbian Orthodox Church filed suit in an Illinois state court claiming that he was wrongfully terminated from his position. Justice Brennan, in his majority opinion, stated that the appointment and removal of clergy is a "quintessentially religious controversy" and that when religious tribunals are established as governing bodies for the

purpose of resolving internal church disputes, civil courts are required to accept their decisions. Serbian Orthodox, supra at 724-25. See also Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985); Simpson v. Wells Lamont Corporation, 494 F.2d 490 (5th Cir. 1974).

In the instant case, plaintiff requests that the Court supercede the judgment of the defendant, an official governing body of the Presbyterian Church. The Court declines to do so, recognizing that in a matter as fundamental as the church-pastor relationship, the decision of the church heirarchy must prevail without interference from the State.

Plaintiff does not dispute that he agreed to submit to the laws and governing tribunals of the Presbyterian Church. He contends, however, that the existence of vows and an internal heirarchy should not absolve the Church from liability when they wrongfully breach an employment contract, breach their duty of good faith and fair dealing implied in that contract, and negligently fail to investigate the allegations leading to plaintiff's termination. Regardless of whether or not the allegations are accurate, the Court is still precluded from a substantive inquiry. If this Court were to undertake an analysis of whether ecclesiastical proceedings were arbitrary or unfair, it would be

engaging in precisely the conduct prohibited by the First Amendment. "... a civil court must accept the ecclesiastical decisions of church tribunals as it finds them." Serbian Orthodox, supra at 713. Therefore, even if all of plaintiff's allegations were factually correct, and the various church committees involved failed to follow their own rules and regulations, this Court would still be prohibited from exercising jurisdiction.

Plaintiff also contends that his claims against the Church are "non-doctrinal" and fall outside the First Amendment's prohibition of jurisdiction. In Jones v. Wolf, 433 U.S. 595 (1979), the Supreme Court exercised jurisdiction to determine

title to church real estate. The Court held that property disputes, even those involving church lands, may be decided by "neutral principles of Law" without intruding on protected church doctrine. Jones, supra at 602. Similarly, the New Hampshire Supreme Court exercised jurisdiction in a case involving four nuns who were working pursuant to employment contracts as lay teachers. The nuns were members of the church laity and not employed as members of the clergy. In fact, the Court specifically noted that religious doctrinal matters in employment were "clearly beyond the judicial sphere of authority." Reardon v. LeMoyne, 122 NH 1042, 1049 (1982).

In the instant case, plaintiff is attempting to fit within the

"non-doctrinal" exception by drafting his claims as causes of action in contract with only a minimal relationship to the nature of his employment. Plaintiff's attempt to utilize the "non-doctrinal" exception is unpersuasive. Regardless of how neutral or ordinary plaintiff's claims may appear, the relationship between pastor and church must be strictly construed as an internal church matter and not as a matter for the Court's attention. Also the plaintiff has not pled nor has he argued that the employment contract in question specifically provided for constitutional procedures and/or that State action was present. Reardon v. LeMoyne, 122 NH 1042, 1049.

The plaintiff has also filed suit

against Reverend Burrett McBee, acting individually, and in his official capacity as Chairman of the Ministerial Relations Committee of the Presbytery of Northern New England. Plaintiff contends that McBee intentionally interfered with his contractual relationship with the Church.

Reverend McBee's actions relative to the plaintiff's contract were taken pursuant to his position with the Ministerial Relations Committee. In order for McBee and other members of the committee to act decisively, they must be granted the freedom and authority to investigate internal church affairs. Therefore, the Court declines to exercise jurisdiction in this matter for the reasons stated previously in this

opinion.

Plaintiff's second claim against McBee is for defamation, alleging that McBee uttered statements questioning the plaintiff's mental stability. Regardless of whether these alleged statements were made pursuant to McBee's position with the Church, the state of the pleadings indicate that they are separate and distinct from the Church's internal doctrine. Reverend McBee may not use the protective shield of the church to avoid defending a matter beyond the scope of the Church Doctrine. Defamation may be determined by neutral principles of law without reference to or consideration of Church Doctrine or teaching. Therefore, the Court must reject defendant's contention that

blanket immunity exists when alleged defamatory statements are made by its officials. The Court will exercise jurisdiction over plaintiff's defamation claim. Defendant's motion for all other claims against them is GRANTED. So ordered.

May 6, 1986

Date

/s/ W. Stephen Thayer, III

W. Stephen Thayer, III,

Presiding Justice

May 14, 1986

Copy to Atty. McNamee

Atty. Middleton

In The Supreme Court of the

State of New Hampshire

ANDREW TEMPLEMAN,	)	
Appellant	)	
	)	
v.	)	No._____
	)	
PRESBYTERY OF NORTHERN	)	
NEW ENGLAND,	)	
Appellee	)	

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

Notice is hereby given that Andrew

Templeman, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Hampshire, affirming the dismissal complaint, entered in this action on November 24, 1986.

This appeal is taken pursuant to 28 U.S.C. [1257 (1) [or(2)].

Randall E. Wilbert, Esq.
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(603) 889-8443

I, Randall E. Wilbert, hereby certify that a copy of the within Notice of Appeal was filed in the New Hampshire Supreme Court on February 13, 1987.

Randall E. Wilbert

I, Randall E. Wilbert, hereby certify that a copy of the within notice of appeal was mailed this 13th day of February to the New Hampshire Supreme Court, the Hillsborough County Superior Court, and to Jack B. Middleton, attorney for the appellee. I certify that all parties interested in the above-captioned matter were served.

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